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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-S-3888-2023 (O&M)

Date of Decision: 13.02.2024

ABHIJEET KUMAR @ ABHIJEET YADAV**.. Appellant****Vs.****STATE OF HARYANA & ANR.****..Respondents****CORAM: HON'BLE MR. JUSTICE SUMEET GOEL**

Present: Mr. Prashant Singh Chauhan, Advocate for the appellant.

Ms. Ankita Ahuja, AAG, Haryana.

Mr. Avtar Singh Bhatti, Legal Aid Counsel
for respondent No.2.

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SUMEET GOEL, J. (Oral)

1. Present appeal has been filed against order dated 07.12.2023 passed by learned Additional Sessions Judge, Rewari, whereby the application of the appellant for grant of regular bail under Section 439 Cr.P.C., in FIR No. 188 dated 27.08.2023 registered under Sections 323, 376 and 506 IPC and Section 3(2)(v) of Scheduled Castes and Scheduled Tribes Act (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the SC/ST Act') (Section 376 IPC deleted and Sections 376(2)(n) and 201 IPC added later on), at Police Station Sector-6, Dharuhera, District Rewari, has been rejected.

2. As per the case set up in the FIR is as follows:-

"Brief facts of the case are that complainant Smt. Pooja wife of Sh. Roop Singh caste Bairwa aged about 25 years resident of Nangal Sumer Singh Police Station Mudawar District Dausa presently residing at Sardar Colony Chopra Naki District Alwar through Police Superintendent of Police, Bhiwadi filed a complaint in the Month of April 2022 that Abhijit yadav got me employed in Jiju ku Chowpanki, because of that I knew him but after that Abhijit Yadav started calling him again and again I told him many times to not call me

unnecessarily/without work but he said that I have got you employed, if you do not talk to me then I will get you remove from the job and will kill your husband and son. Due to which I got scared, after that one day Abhijit called me and said that he has some important work, hence he called me to a house to meet me, I believed him and went there. There Abhijit Yadav forcibly raped me at knife point and also took my obscene photos and threatened me that if I told this to anyone then he would kill me and my husband. Because of the fear I did not told this to anyone, after that he started blackmailing me and forcibly raping me. On 30.01.2023 being upset with Abhijit, I left the job from the company and started staying at home. Angered by this, Abhijit Yadav started pressurizing me over the phone. On 20.02.2022 when I was alone, Abhijit Yadav had again forcibly raped me and threatened me that if you did not come back to the company then I will kill your husband and your son. I became said and went to my village and did not said anything to anyone and switched off my phone. After that on 23.02.2023 Abhijit had a scuffle with my husband and said that Pooja is mine, if you do not call Pooja back then I will kill you and your son. Because of this my husband got scared and on 13.03.2023 Abhijit called me and threatened me that you come back to Bhiwadi again otherwise "Chamari Dedhni" I will get your husband and son killed in 10 days and will circulate your photos on Social Media. Because of the fear we went to our village. My husband has also left the job. With great courage we have come to register a report."

3. Learned counsel for the appellant has argued that the appellant is in custody since 16.09.2023 and the investigation already stands completed. Learned counsel for the appellant has further argued that there was a consensual relationship between the appellant and the complainant/victim which turned sour on account of which the FIR in question was got registered. Learned counsel for the appellant to substantiate his argument has referred, *in extenso*, to the photographs (Annexure A-2), whatsapp chat (Annexure A-3) and video recordings (Annexure A-4). Thus regular bail is prayed for.

4. Counsel for the State, on the other hand, contends that the impugned order has been passed considering the totality of the circumstances of the case. All the grounds raised by the appellant have been considered and dealt with in their proper perspective by the trial Court. Therefore, the appellant is not entitled to the concession as prayed for.

5. I have heard counsel for the parties and have gone through the available records of the case.

6. The appellant was arrested on 16.09.2023 whereinafter investigation was carried out and challan stands presented on 21.11.2023. Total 18 prosecution witnesses have been cited & the culmination of trial will take its own time. The rival contention of the learned counsel for the parties as to whether there was consensual relationship between the appellant and the victim & the instant FIR is outcome of such relationship turning sour will be gone into during the course of trial. This Court does not deem it appropriate to delve deep into these rival contentions, at this stage, lest it may prejudice the case of either of the parties. As per custody certificate dated 12.02.2024 filed by learned State counsel, the appellant has suffered incarceration for about five months & the same does not reflect involvement of the appellant in any other case. No perceptible material has been brought forward to indicate that there is likelihood of the appellant absconding from the process of law or interfering with the prosecution evidence. Suffice to say, further detention of the appellant as an undertrial is not warranted.

7. In view of totality of factual matrix of the present case, the instant appeal is allowed. Appellant is ordered to be released on regular bail on his furnishing bail/local surety bonds to the satisfaction of the concerned

learned CJM/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned learned CJM/Duty Magistrate, the appellant shall remain bound by the following conditions:-

- (i) The appellant shall not mis-use the liberty granted.
- (ii) The appellant shall not tamper with any evidence, oral or documentary, during the trial.
- (iii) The appellant shall not absent himself on any date before the trial.
- (iv) The appellant shall not commit any offence while on bail.
- (v) The appellant shall deposit his passport, if any, with the trial Court.
- (vi) The appellant shall give his cellphone number to the Investigating Officer/SHO of concerned Police Station and shall not change his cell-phone number without prior permission of the trial Court/Illaqa Magistrate.
- (vii) The appellant shall not in any manner try to delay the trial.

8. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned CJM/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the State/complainant shall be at liberty to move cancellation of bail of the appellant.

9. Ordered accordingly.

10. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

13.02.2024

Jasmine Kaur

Whether speaking/reasoned

Whether reportable

(SUMEET GOEL)

JUDGE

Yes No

Yes No